IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 5243 of 2007

Date of decision : August 07, 2007

Raj Singh & others

.....Petitioners

through Mr. Rajesh Chaudhary, Advocate

v.

State of Haryana and others,

.....Respondents

through Mr.Ashish Kapoor, Addl.A.G.Haryana

CORAM : HON'BLE MR.JUSTICE P. SATHASIVAM
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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RAJIVE BHALLA,J

The petitioner prays for the issuance of a writ of certiorari for quashing the notification, dated 22.9.2006 (Annexure P-3), issued under Section 4 read with clause (C) of sub section (2) of Section 17 of the Land Acquisition Act, (for short herein after referred to as "the Act"), as also the notification, dated 11.10.2006 (Annexure P-3/A), issued under Section 6 of the Act.

The State of Haryana issued a notification, under Section 4 read with clause (C) of sub section (2) of Section 17 of the Act, to acquire land for the construction of Wazirpur Link Drain from RD 0 to 400 and for the construction of Wazirpur Sub Link Drain RD 0 to 15300 out falling RD 2000 of Wazirpur Link Drain Jahazgarh, Baghpur, Beri Khas and Wazirpur,

Tehsil Beri and District Jhajjar. The above notification was followed by a declaration, dated 11.10.2006, issued under Section 6 of the Act.

Challenge to the aforementioned notifications has been primarily laid on the pleas that the substance of the notifications were not published in the locality, in accordance with the provisions of Section 4 of the Act. The alignment of the drain, as proposed, is mala fide, and has been demarcated with the object of saving the holdings of land owners, whose land was to be acquired, in the original scheme, notified in 1985-86, and that the public purpose, sought to be achieved is not so urgent as to warrant the invoking of urgency provisions of Section 17 of the Act.

Counsel for the petitioners contends that the substance of the notification, issued under Section 4 of the Act was not published in the locality. No munadi, as envisaged by Section 4 of the Act, was ever conducted, thus, rendering the acquisition proceedings null and void. It is further argued that the project for construction of the Wazirpur Link Drain commenced in 1985 with the issuance of notifications, for acquisition of land, under Sections 4 and 6 of the Act. However, a part of this drain could not be excavated, as objections were raised by some land owners. The scheme was revived in 2006, by invoking urgency provisions, under Section 17 of the Act. It is vehemently argued that as the scheme remained pending since 1985, there was no such immediate urgency as would justify the invoking of the provisions of Section 17 of the Act to deprive the petitioners of their right, under the Act, to ventilate their grievances. It is further argued that urgency provisions, suspending the right to file objections, under Section 5A of the Act, can only be invoked, where the public purpose is of such a nature as would not warrant a delay of 30 days, a

period required for filing objections. As the public purpose, namely, excavation of a drain remained pending for more than 20 years, there was no grave urgency that necessitated the invoking of Section 17 of the Act.

The last contention, urged by counsel for the petitioners, is that the alignment, now proposed, is intended to save the land of those persons, who had stalled the earlier acquisition and, therefore, these proceedings are actuated by mala fide.

Counsel for the State of Haryana, on the other hand, submits that so as to protect villages and agricultural lands from the fury of floods, the State Government has constituted a Flood Control Board, which is monitoring the scheme. The scheme, to excavate the drain, to provide a passage, for flood waters, has been framed in public interest and as it was to be completed before the onset of the monsoon, the urgency provisions of Section 17 of the Act were invoked. The earlier scheme was curtailed, on account of technical reasons. However, in 2005-06, villages Bhagalpuri, Beri Khas and Wazirpur, as also 5120 acres of fertile agricultural land were severally affected by flood waters. A scheme to control floods was approved by the State Flood Control Board in the meeting held in January 2006. The government after assessed the urgency and the necessity of the scheme, directed the concerned department to execute the scheme within a time bound schedule. It was, thus, directed that the scheme be completed before onset of the monsoon. It is argued that the petitioners' contention that the emergency provisions should not have been invoked is incorrect and should, therefore, be rejected.

As regards the petitioners' contention that substance of the notification, issued under Section 4 of the Act, was not published in the

locality, counsel for the respondents, while referring to the Rapat Roznamcha, original records whereof have been produced before this Court, contends that as per entries in the Roznamcha, the substance of the notification, issued under Section 4 of the Act, was published, by way of a munadi. It is further contended that the relevant Roznamcha clearly records the factum of munadi and bears the signature of the concerned chowkidar.

It is also contended that land owners, whose lands were allegedly released, with mala fide intent, have not been impleaded as parties. No specific allegations of mala fide have been levelled against any government functionary. Even otherwise, as urgency for the implementation of the scheme has already been explained, no question of mala fide arises.

We have heard counsel for the parties and perused the paper book.

As regards invoking of the provisions of Section 17 of the Act, we are satisfied that the reasons therefor are bona fide. It is apparent from the pleadings that in 2005-06, the geographical area, subject matter of the present petition, was ravaged by floods, causing serious damage to life and property. Villages were inundated and agricultural land laid waste. Thus, the endeavour of the State Government to construct a drain to prevent flood water from unleashing their fury once again, cannot be faulted, and held to be a mala fide exercise of statutory power. The urgency to conclude the project before the onset of the monsoon season was real and not illusory. We find no reason legal or factual to question the State Government's judgment in invoking the provisions of Section 17 of the Act.

It is true that by invoking the provisions of Section 17 of the Act, land owners have been deprived of the only opportunity to object to the

acquisition. However, where public purpose so demands, private rights must yield and where the situation so warrants, the rights of a land owner,conferred by Section 5A of the Act, must necessarily yield to the urgency of the situation.

As regards the stated absence of any publication in the locality, counsel for the State of Haryana has produced before us the original Rapat Roznamcha registers. We have perused the same and are satisfied that the substance of the impugned notifications was published in the locality. A munadi was conducted by the chowkidar. His signature appears in the original record. The petitioners' contention that no publication was effected in the locality is, thus, factually incorrect and is consequently rejected.

The last contention, raised by counsel for the petitioners, is the plea of mala fide. A plea of mala fide is necessarily directed against a private individual or a government functionary. A perusal of the memorandum of parties discloses the absence of any private individual or government functionary, arrayed as a party. The pleadings, in the writ petition, do not disclose the names of any private individuals or government functionary, who actuated by mala fide initiated acquisition proceedings. Even otherwise, the allegations of mala fide, appear to have been suitably explained in the respondents' pleadings by asserting that the original alignment, as proposed, was not completed and the new alignment was proposed on technical considerations. Thus, the petitioners have failed to substantiate the allegations of mala fide.

In view of what has been noticed herein above, we find no error of law in the impugned notifications and consequently have no

hesitation in dismissing the present writ petition. Accordingly, the writ petition is dismissed with no order as to costs.

(RAJIVE BHALLA)
JUDGE

(P. SATHASIVAM)
JUDGE

August 07, 2007.
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